D.T.E. 94-185-E

Investigation by the Department on its own motion into IntraLATA and Local Exchange Competition in Massachusetts.

ORDER ON BELL ATLANTIC--MASSACHUSETTS=

PRICE FLOOR COMPLIANCE FILING

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COMPLIANCE FILING

I. INTRODUCTION AND PROCEDURAL HISTORY

This Order concerns the development of price floors for certain retail services of New England Telephone and Telephone Company, d/b/a Bell Atlantic--Massachusetts (ABell Atlantic@ or ACompany@).[(1)] On September 1, 1998, the Department of Telecommunications and Energy (ADepartment@) issued an Order confirming prior rulings in this docket, which provided that a wholesale tariff offering for all services at an avoided-cost discount satisfies Bell Atlantic=s obligation to set retail price floors, except for retail toll services. D.P.U./D.T.E. 94-185-D at 8-10 (1998), citing Local Competition, D.P.U./D.T.E. 94-185-B (1997); NYNEX Price Cap, D.P.U. 94-50, at 218, n.120 (1995). The Department found that for retail toll services (other than premium toll services) Bell Atlantic must develop price floors that impute the price of switched access charged to interexchange carriers (AIXCs@) and also include the marginal cost of related overhead. Id. at 10, citing New England Telephone & Telegraph Co., D.P.U. 89-300 (1990); D.P.U. 94-50 (1995). The Department directed Bell Atlantic to develop and file price floors, based on an incremental[(2)] cost study, for all its retail non-premium toll services.[(3)] Id. at 11.

In D.P.U. 94-50, the Department found that it was necessary to include an explicit price floor for Bell Atlantic=s services, monopoly and competitive, to prevent

cross-subsidization and anti-competitive pricing. In that Order, the Department determined that the appropriate price floor for a Bell Atlantic rate element depends on whether Bell Atlantic controls an essential input for a competitor=s offering of a competing service, and found:

For those services where NYNEX (now Bell Atlantic) controls an essential input for a competitor=s offering of a competing service, in order to prevent anti-competitive pricing, the proper price floor for NYNEX=s own rate element shall consist of the relevant wholesale rate that at least one competitor pays to NYNEX in order to offer the service, and NYNEX=s marginal cost of related overhead. For all other services, in order to prevent cross-subsidization, the proper price floor shall be the marginal cost, as reported in [NYNEX=s] most recent marginal cost study, MCS VI.

D.P.U. 94-50, at 205-206 (1995).

On November 2, 1998, Bell Atlantic filed its price floors compliance filing in accordance with the Department=s Order in D.P.U./D.T.E. 94-185-D (ACompliance Filing@). Parties were given an opportunity to comment on the Compliance Filing. Comments were received from AT&T Communications of New England, Inc. (AAT&T@) and Bell Atlantic. See Procedural Notice, D.P.U./D.T.E. 94-185 (December 14, 1998). After review of the Compliance Filing and the comments received, the Department issued a procedural notice calling for further investigation and docketing the matter as D.T.E. 94-185-E. See Hearing Officer Memorandum, D.T.E. 94-185-E (March 19, 1999).

Evidentiary hearings were held at the Department=s offices on September 15 and 20, 1999. Bell Atlantic sponsored the testimony of Paula L. Brown, its vice-president of regulatory policy and planning, and William E. Taylor, a telecommunications consultant with National Economic Research Associates, Inc. AT&T sponsored the testimony of William D. Salvatore, its district manager for regulatory affairs. The Department of Defense and All Other Federal Executive Agencies (ADOD/FEAs@) sponsored the testimony of Harry Gildea, a consultant with Snavely, King & Associates. The evidentiary record consists of 30 exhibits and two responses to record requests. Initial and reply briefs were filed by Bell Atlantic, AT&T and the DOD/FEAs.

II. DESCRIPTION OF BELL ATLANTIC=S PRICE FLOORS CALCULATIONS

Bell Atlantic followed the following methodology in conducting its price floor analysis. First, Bell Atlantic identified the retail revenues associated with each offering. Next, the Company determined the minutes-of-use generated by each offering, separating local from toll usage. Then, the Company identified the wholesale costs. For toll services, Bell Atlantic considered originating and terminating switched access as essential wholesale services used by competitors to compete. For local usage, Bell Atlantic does not impute a wholesale charge but instead uses marginal cost to develop a price floor. The Company then calculated the marginal cost of related overhead by identifying the intrastate expenses in specific accounts associated with providing intrastate retail toll services and by determining the ratio of those expenses to intrastate revenues. Finally, the total cost (wholesale plus the marginal cost of related overhead) was subtracted from the retail revenue to establish a retail price floor.

Based on the above methodology, the Company calculated the price floors for the various services. For business and residence MTS and Operator Handled measured toll services, Bell Atlantic calculated the cost of switched access and the marginal cost of retail overhead for each service, and subtracted that from the total revenues generated by each service. In developing price floors for non-premium toll services that are part of optional calling plans, Bell Atlantic considered the retail revenue associated with all services that are purchased when a customer subscribes to a bundled offering. For example, when a customer subscribes to Baystate Metropolitan Calling, the customer is charged for unlimited local usage ($6.94), Metropolitan premium usage ($14.82), Baystate initial period toll usage ($3.00), and overtime usage ($0.05 per minute). In calculating the costs of each service for purposes of its price floors analysis, the Company first determined whether the usage associated with each service was local or toll usage. Then, Bell Atlantic determined the wholesale cost for local usage by multiplying the local minutes of use by the Company=s marginal cost of local usage. The switched access cost for toll usage was calculated by multiplying the toll minutes of use by the end-to-end switched access rate. To calculate the marginal cost of related overhead, retail revenues were multiplied by a retail overhead factor of 14.12 percent. The sum of the switched access costs and retail overhead costs was then subtracted from retail revenues to determine the price floors.

AT&T disputes two aspects of Bell Atlantic=s price floors calculations for non-premium toll services: 1) that the price floors for such toll services are calculated on a bundled basis and not as separate components of the Company=s bundled optional calling plans, and 2) that its calculation of the marginal cost of related overhead is incorrect.

III. CALCULATION OF PRICE FLOORS FOR TOLL SERVICES ON BUNDLED BASIS

A. Introduction

In D.P.U. 94-185, the Department concluded that the term Aservice@ should be used to identify services which: 1) are available for purchase by consumers or carriers, and 2) have a specific tariffed rate filed with the Department. D.P.U. 94-185, at 29-30 (1996). The Department directed Bell Atlantic to use the above definition of service and to file price floors for each service, which would be judged against an existing tariffed rate or a sum of existing tariffed rates. Furthermore, the Department stated that, to the extent that rate elements can be purchased collectively, such as the per-message and per-minute charges incurred in the first minute of a local measured call, the proper price floor should include all charges for rate elements incurred as a result of using that particular service. Id. at 30.

B. Positions of the Parties

1. AT&T

AT&T argues that Bell Atlantic=s price floors calculations improperly combine local calling, toll calling, and credit card services in a way that makes it impossible to determine whether the Company=s toll services satisfy the Department=s imputation price floors requirements (AT&T Initial Brief at 5). AT&T claims that the Department=s price floors standards require that the Company=s toll rates exceed the relevant access rate plus related overhead and that aggregate imputation will not prevent Bell Atlantic from pricing

anti-competitively for specific customers and/or services while still maintaining the proper differential on average (id. at 5-6).

According to AT&T, the economic choice faced by the end user is whether to purchase toll service from Bell Atlantic, either separately or as part of the Bay State East Metropolitan Plan, or whether to purchase it from a competitive intraLATA toll provider (id. at 8). Thus, AT&T states that when Bell Atlantic includes the costs and revenues associated with non-toll services in its price floors analysis, it is averaging the price/cost relationship of non-toll services with that of toll services, even though competition is only for the toll portion of the service (id.).

AT&T argues that as a result of this averaging, the Company has treated local service as a competitive service by including only the marginal cost of local service in its price floors calculations (id. at 9). Use of marginal cost in developing a price floor, AT&T argues, is permissible only when a Bell Atlantic competitor requires no input from Bell Atlantic to offer a comparable service; otherwise, where an essential input is required, the Company must impute the rate it charges for those inputs (id.). AT&T contends that because local usage is a service for which essential inputs are required, Bell Atlantic should have imputed the prices that it charges its competitors for the essential inputs for local service (id.). According to AT&T, Bell Atlantic=s failure to impute charges for unbundled switching and transport in the local service portion of the price floor calculation makes local service appear as if its prices exceed its imputed costs, when in fact they do not (id. at 10). AT&T claims that were Bell Atlantic to use total-element, long-run, incremental cost (ATELRIC@) rates rather than marginal cost, many of its bundled offerings that include local exchange service may not pass the price floor test (AT&T Reply Brief at 5). To remedy the problem of averaging, AT&T argues that Bell Atlantic should be required to calculate the revenue and imputed cost for each service in the bundled offering before they are added and averaged, to ensure that one service does not subsidize another (AT&T Initial Brief at 10-11). As an alternative, AT&T states that Bell Atlantic should calculate the price floor for each toll service included in the package offering in isolation of other services (id.).

AT&T contends that, contrary to Bell Atlantic=s claims, the service-based imputation that it recommends here bears no resemblance to the rate element imputation that the Department rejected earlier in this docket (AT&T Reply Brief at 1). According to AT&T, a rate element approach has traditionally been referred to as an imputation requirement in which individual rate elements, (e.g., per-minute and per-message rates), which cannot be purchased separately but which are the pricing components of a stand alone service, must each pass an imputation test (id. at 2). In contrast, AT&T argues its service-specific imputation approach ignores individual rate elements within a service and requires that the service as a whole pass an imputation test (id. at 3).

2. Bell Atlantic

Bell Atlantic claims that AT&T=s imputation proposal is merely a form of rate element imputation, an approach that the Department previously rejected in this docket (Bell Atlantic Initial Brief at 6). Bell Atlantic argues that AT&T=s approach does not provide the protection from anti-competitive pricing that AT&T contends it does (id.). According to Bell Atlantic, if a service exceeds the price floor for the service as a whole, any part or component of the service also will exceed the price floor simply by assigning sufficient revenue to the component (i.e., increasing the price of one component and decreasing the price of another component) (id. at 7). Bell Atlantic requests that the Department not engage in the Apointless exercise@ proposed by AT&T (id.).

Bell Atlantic states that, consistent with the Department=s definition of service, each of the services identified by the Company in its compliance filing is a tariffed service with a corresponding tariffed price (id.). In addition, Bell Atlantic states that when the Company earlier submitted in this docket a list of services for which price floors were to be calculated, AT&T acknowledged that the Company=s list appeared to conform to the Department=s directives (Bell Atlantic Reply Brief at 9). The Company also argues that its approach to calculate price floors in this case is consistent with the approach it uses to calculate price floors for customer-specific pricing arrangements in Massachusetts (Bell Atlantic Initial Brief at 7). In both cases, according to Bell Atlantic, the Company ensures that the retail prices/revenue exceed the sum of the relevant wholesale costs, plus the related marginal overheads (id.).

Bell Atlantic also requests that the Department not consider either of the two alternatives proposed by AT&T because: 1) the first alternative would require the Company to demonstrate that the total revenue generated by the package offerings equals or exceeds the sum of the price of the relevant wholesale rate plus the marginal costs of related overhead for each of the services contained within the package, and 2) the second alternative would require Bell Atlantic to file a price floor for the toll portion of the service, even though the customer must subscribe to an offering that includes the toll portion as part of a package (Bell Atlantic Initial Brief at 7-8).

C. Analysis and Findings

While Bell Atlantic=s optional calling plans meet an overall price floors test, we cannot determine whether the non-premium toll component within the optional plans meets its own price floors test. Under Bell Atlantic=s proposal, its retail revenue from the optional calling plans is compared to the total cost of the service components comprising the particular bundled offerings. For example, in calculating the price floor for Baystate Metropolitan Calling Service, the Company=s total retail revenue from that optional plan was compared against the sum of the costs of the component services (i.e., local, toll, and calling card services). As AT&T notes, when establishing price floors for toll services, the economic choice faced by the customer is whether to purchase toll service from Bell Atlantic, either separately or as part of an optional calling plan, or to purchase it from a competitive intraLATA toll provider. Bell Atlantic=s contention that setting price floors on a service-by-service basis is a Apointless exercise@ ignores the fact that customers have a choice between purchasing services on a stand-alone or bundled basis. Toll services should not have a different price floor standard depending on whether they are purchased alone or as part of a package.

Therefore, the Department=s analysis must focus on whether Bell Atlantic=s non-premium toll services, which are subject to competition, pass their own price floor imputation test. Bell Atlantic=s approach to calculating its price floors for non-premium toll services on a bundled basis in theory could lead to anti-competitive pricing of the toll component in violation of the policy adopted in D.P.U. 94-50. See D.P.U. 94-50, at 205 (1995) (Ait is necessary to include an explicit price floor for NYNEX=s services, monopoly and competitive, in the price cap plan in order to prevent cross-subsidization and anticompetitive pricing@).

Bell Atlantic argues that calculating overall price floors for its optional calling plans is consistent with the approach the Company uses to calculate its price floors for

customer-specific plans (ACSPs@). Bell Atlantic=s claim is not persuasive. First, Bell Atlantic=s claim is not supported with record evidence. Second, Bell Atlantic CSPs on file with the Department only contain price floors data for measured toll services, not price floors for bundled optional calling plans.

Moreover, contrary to Bell Atlantic=s argument, calculating separate price floors for each component of the optional offerings would not constitute the previously-rejected Arate element approach.@ Unlike rate elements, such as per-message and per-minute charges, each of the components (i.e., services) of the optional offerings can be purchased separately.[4] As noted above, in D.P.U. 94-185 the Department concluded that the term Aservice@ should be used to identify services which: 1) are available for purchase by consumers or carriers, and

2) have a specific tariffed rate filed with the Department. D.P.U. 94-185, at 29-30 (1995). As Bell Atlantic acknowledges, each component of its optional service offerings, including the toll component, is available for purchase by consumers and has a specific tariffed rate on file with the Department (Bell Atlantic Initial Brief at 7).

For these reasons, we find that Bell Atlantic has not correctly applied the Department=s price floors imputation standard for its non-premium toll services. Accordingly, in order to ensure that Bell Atlantic=s non-premium toll services are not priced

anti-competitively, the Department directs the Company to calculate separate price floors for each of the measured toll services included in the bundled optional calling plans.[5] The price floor for the bundled service offering shall be equal to the sum of the wholesale prices for the non-toll components (i.e., retail price for that component minus the avoided-cost discount) and the price floor for the toll component.

IV. MARGINAL COST OF RELATED OVERHEAD

As noted above, the Department=s imputation standards require that Bell Atlantic impute the cost of switched access and add that to the marginal cost of related overhead to develop price floors for non-premium toll services. AT&T challenges two aspects of Bell Atlantic=s calculations of the marginal cost of related overhead for non-premium toll services: 1) Bell Atlantic=s exclusion of certain retail overhead costs based on jurisdictional separations rules, and 2) the factor used by Bell Atlantic to determine the marginal cost of related overhead.

A. Jurisdictional Separation of Costs

1. Introduction

Bell Atlantic assigns a portion of the expenses from its retail overhead accounts to the interstate jurisdiction, consistent with Federal Communications Commission=s (AFCC@) separations rules. These expenses, therefore, are excluded from the calculation of marginal cost of related overhead. The accounts and the percentage of intrastate expenses that Bell Atlantic does include in its calculations are: Account 6611 (Product Management - 69 percent); Account 6612 (Sales - 71 percent); Account 6613 (Product Advertising - 69 percent); and Account 6623 (Customer Services and Billing - 80 percent) (Exh. BA- 3, at 2). The issue here is whether Bell Atlantic should assign any retail overhead expenses to the interstate jurisdiction, thus excluding such expenses from the its marginal cost calculation.

2. Positions of the Parties

a. AT&T

AT&T argues that marginal cost of related overhead is an economic concept designed to measure real, economic costs and has nothing to do with the FCC separations process (AT&T Initial Brief at 15). AT&T contends that by using separated data, Bell Atlantic does not measure all of the incremental retail costs associated with providing intraLATA toll service, making Bell Atlantic appear more efficient than it actually is (id. at 16). Moreover, AT&T claims that there is no evidence that costs allocated to the interstate jurisdiction by the FCC separations process are related to interstate services, as opposed to intrastate services, because the allocation is not done on a cost-causative basis (id. at 18).

AT&T argues that Bell Atlantic treats only a portion of the expenses in the four accounts as avoided,[(6)] even though the expenses excluded from the accounts are not related to the provision of access service but are part of the marginal cost of related overhead (id. at 13). According to AT&T, Bell Atlantic ignores the fact that the excluded expenses vary with the level of toll service (and, thus, by definition are avoided), instead choosing to focus only on the fact that these expenses are allocated to the interstate jurisdiction for FCC separations purposes (id. at 14). AT&T contends that the Department in its Phase 2 Order in the Consolidated Arbitrations determined that jurisdictionally separated data should not be used in the calculation of the avoided cost discount (id. at 15).[(7)]

AT&T also contends that Bell Atlantic has presented no evidence to show its method accurately measures the marginal overhead cost of intrastate toll services, and argues that the Department should reject the Company=s use of separated data as a matter of law (AT&T Reply Brief at 7). Moreover, according to AT&T, the Department would violate the reasoned consistency doctrine if it approved Bell Atlantic=s proposal to use separated data, since Department precedent holds that separated data does not accurately measure real, economic costs (id. at 7).

b. Bell Atlantic

Bell Atlantic argues that because it is impossible to accurately determine the specific jurisdiction to which costs should be assigned, the use of separations information is a reasonable approach to allocating costs to the intrastate and interstate jurisdictions for the purpose of calculating the retail overhead factor (Bell Atlantic Initial Brief at 9). According to the Company, because marginal cost measures only those costs that vary directly with output, any costs above direct cost included in Bell Atlantic=s calculation of the marginal costs of related overhead would inflate the price floors (Bell Atlantic Reply Brief at 4). However, in practice, Bell Atlantic notes that using separated data results in a calculation of marginal cost of related overhead that exceeds its direct cost (id. at 5). This, the Company states, is because the separations process begins by assigning the direct costs and then adds an allocation of indirect and/or fixed costs (id. at 5).

Bell Atlantic contends that AT&T presented no evidence to contradict Bell Atlantic=s showing that approximately 30 percent of the retail overhead costs could be attributable to the interstate jurisdiction (Bell Atlantic Initial Brief at 9). The Company asserts that AT&T failed to show that Bell Atlantic=s jurisdictional separation of costs did not result in a reasonable assignment of costs (id.). Finally, Bell Atlantic states that its marginal cost of related overhead calculation is conservative in that, for certain accounts, costs not attributable to measured toll service were included (id.).

3. Analysis and Findings

The Department=s finding in the Phase 2 Order (that Bell Atlantic could not use separated costs for purposes of calculating the avoided cost discount) also applies to development of marginal costs.[8] As in the Consolidated Arbitrations, the purpose of this proceeding is to look at the actual costs incurred by Bell Atlantic and to determine which expenses would be incurred in providing retail services. The separation of costs by jurisdiction, which is a regulatory construct, is not consistent with the concept of marginal cost of related overhead because, unlike with jurisdictional separation of costs, it attempts to determine the actual expenses incurred to provide services on retail basis.

In addition, even if separations rules made sense in this context, Bell Atlantic failed to demonstrate that its retail overhead costs are attributable to the provision of interstate services. When the Company=s witness, Paula L. Brown, was asked whether its expense calculation was based on cost causation, she replied that it was, in fact, based on FCC cost recovery rules

(Tr. at 63-65). Moreover, the Company=s witness indicated that the expenses that are allocated in the separations process to the interstate jurisdiction by the FCC may or may not be related to the offering of toll and local service (id. at 65). Accordingly, for all of the reasons stated above, Bell Atlantic shall use total, un-separated expenses in its calculation of the marginal cost of related overhead of non-premium toll services.

B. Resale Discount

1. Introduction

Bell Atlantic calculated its 14.12 percent retail overhead expense[9] loading factor by first identifying the intrastate expenses in specific accounts associated with providing intrastate retail toll services (Exh. BA-3). The expenses then were divided by intrastate revenues for measured toll services to derive the 14.12 percent factor.

2. Positions of the Parties

a. AT&T

AT&T challenges Bell Atlantic=s use of the 14.12 percent loading factor, arguing that Bell Atlantic should use the 24.99 resale discount as the multiplier to calculate retail overhead. AT&T contends that Bell Atlantic=s use of a 14.12 percent retail overhead factor grossly understates the incremental retail costs associated with the services (AT&T Initial Brief at 12). AT&T claims that the Company should have used the avoided cost resale discount because that discount reflects the Department=s findings on the level of expenses that are avoidable when retail service is not offered (id. at 12-13).

AT&T claims that the resale discount reflects long-run variable costs which will increase or decrease with changes in the size of the Company, while Bell Atlantic=s proposed loading factor does not (AT&T Reply Brief at 8). For example, according to AT&T, although Bell Atlantic assumed a decline in worker salaries and direct expenses if retail outputs were to decline, the Company did not include reductions in indirect expenses for such things as the buildings in which the employees worked, the equipment that they used, the furniture in their offices, and the salaries of the human resources and accounting staff that supported them (id.). AT&T argues that the Department in its Phase 2 Order found that the level of overhead and support expenses will vary with the level of retail operations (AT&T Initial Brief at 21). Similarly, AT&T claims that Bell Atlantic ignored the likelihood that a decline in the number of customers would mean a decline in operator services and all of the expenses associated with supporting that workforce (AT&T Reply Brief at 8). AT&T argues that, by directing Bell Atlantic to include advertising costs in its calculation of the marginal cost of related overhead in D.P.U. 94-50, the Department clearly recognized that over the long run the resources that Bell Atlantic would devote to advertising would change with the level of retail toll service

(id. at 10).

Lastly, AT&T disputes Bell Atlantic=s argument that the resale discount includes

non-toll costs. AT&T contends that Bell Atlantic=s calculation of the 14.12 percent factor does in fact include the revenues of non-toll services (AT&T Reply Brief at 10). In addition, AT&T claims it is possible that the exclusion of non-toll costs and revenues from the calculation would increase the size of the factor (id. at 11).

b. Bell Atlantic

Bell Atlantic contends that use of the resale discount instead of a marginal cost loading factor, to calculate price floors is not economically sound (Bell Atlantic Initial Brief at 10). Bell Atlantic argues that the marginal cost of related overhead is a completely different cost measure than the avoided cost discount (id.). According to Bell Atlantic, the concept of marginal cost requires the Company to consider only those direct retail costs that vary with output and, by definition, excludes all fixed costs, non-retail costs, and all retail costs that are not directly related to provision of the particular service (id.). In contrast, Bell Atlantic states that the avoided cost resale discount includes all the direct and indirect costs associated with the Company=s entire retail operation, because the discount is based on the assumption that the Company would provide only wholesale services (id. at 11). Bell Atlantic argues that the avoided cost discount is inconsistent with the Department=s approved methodology for calculating price floors and includes costs that are not marginal costs and that are unrelated to the service for which the price floor is being calculated (id. at 11-12).

3. Analysis and Findings

In D.P.U./D.T.E. 94-185-D, the Department stated that Bell Atlantic shall calculate the Amarginal cost of related overhead@ for measured toll services, which would be added to imputed cost of switched access to derive the price floors for such services. D.P.U./D.T.E. 94-185-D at 10 (1998). Marginal cost and the FCC=s avoided cost method are two distinct costing methods that measure different things. Marginal cost measures the incremental changes in cost due to changes in output and excludes indirect and fixed costs and all other costs that do not vary with output. The FCC=s avoided cost method is based on the assumption that an incumbent local exchange carrier (AILEC@) will exit entirely the retail business and only provide wholesale services.[10] As a result, the avoided cost method (which, as noted earlier, is reflected as a percentage discount) measures not only direct costs, but also fixed and indirect costs associated with an ILEC=s entire operations. Contrary to AT&T=s claims, we find that Bell Atlantic has correctly complied with the Department=s prior directives by using a marginal cost method to determine price floors for its measured toll services. Use of the avoided cost resale discount is simply not appropriate for purposes of calculating the retail overhead of a particular service. To the extent that AT&T argues for use of the avoided cost resale discount, it inappropriately is seeking reconsideration of our earlier findings in this proceeding.

V. ORDER

Accordingly, after due hearing and consideration, it is hereby

ORDERED: That the price floors compliance filing of New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts, filed with the Department on November 2, 1998, is DENIED; and it is

FURTHER ORDERED: That New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts shall file revised price floors calculations consistent with the findings herein within 21 days from the date of this Order.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr. Commissioner

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Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. [1] D.P.U. 94-185 was opened in 1995 to investigate local exchange competition issues. After the passage of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat 56, amending the Telecommunications Act of 1934, now codified as 47 U.S.C.

' 224 (Athe Act@), the Department of Telecommunications and Energy discontinued its investigation of those issues. However, this docket remained open to examine price floors for Bell Atlantic=s retail services not affected by the Act.

2. [2] The Department herein uses the terms Amarginal cost@ and Aincremental cost@ interchangeably.

3. [3] Bell Atlantic=s non-premium toll services (or measured toll services) are billed, at least in part, on a per-minute basis. Examples of the non-premium services include: residence and business Message Telecommunications Service (AMTS@), residence and business Operator Handled service, Bay State Metropolitan Calling and Bay State

Non-Metropolitan Calling (which include local, toll and calling card services), Measured Circle Calling and Call Around 413 (which include toll and calling card services), and Business Link (which includes local, toll, calling card, dedicated toll free and common line toll free services), 800 Service, and Dedicated Toll Free service. Premium toll services are billed on a flat-rate basis. Examples of Bell Atlantic=s premium services include: Metropolitan Calling, Circle Calling, Suburban Calling, Eastern LATA Unlimited Calling Plan and CallAround 413.

4. [4] In D.P.U. 94-185, the Department rejected the rate element approach because it found it to be too specific and because it ignored the reality that certain rate elements can only be purchased collectively. D.P.U. 94-185, at 29 (1995). The Department found that the proper price floor of a service should include all charges for rate elements incurred as a result of using that particular service. Id. at 30.

5. [5] Because we reject Bell Atlantic=s use of Aaveraged@ price floors for service components of its bundled optional calling plans, it is not necessary for us to address AT&T=s alternative argument that Bell Atlantic use TELRIC rates rather than marginal cost for calculating price floors for the local service component of the optional calling plans.

6. [6] In economic terms, avoided costs refer to those costs that a company would no longer incur were it to stop providing a particular product or service. In this context, if Bell Atlantic stopped providing intraLATA toll service, it would avoid some retail overhead costs associated with the provision of those services.

7. [7] In the Phase 2 Order, the Department determined the discounts that Bell Atlantic must make its retail services available on a wholesale basis to CLECs in accordance with the Aavoided cost@ method of the Act and the FCC=s rules implementing that method. Consolidated Arbitrations, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 2, at 35-36 (1996) (APhase 2 Order@).

8. [8] The Department stated in the Phase 2 Order that Athe jurisdictional distribution of those costs, whether based on an arbitrary interstate/intrastate separations process or, indeed, our own intrastate ratemaking methodology, is not relevant.@ Phase 2 Order at 33.

9. [9] As noted above, the intrastate expense accounts used in calculating the loading factor are product management, sales, product advertising, and customer services and billing.

10. [10] We note that the FCC=s avoided cost method should not be confused with the general economic concept of Aavoided cost,@ which we mention at n.6, above.